IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 4681 of 2003(O&M)
Date of Decision 16.03.2007

Naurata Ram

...Petitioner

Versus

Ruldu Ram and others

...Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma.

Present: Mr. Amit Rawal, Advocate
for the petitioner
Mr. Sumeet Mahajan, Sr.Advocate with
Mr. Sham Lal Bhalla, Advocate
for respondent Nos. 1 and 2.

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Vinod K. Sharma, J. (Oral)

The present revision petition has been filed against the order passed by the learned courts below vide which the application moved by the petitioner under Order 39 Rules 1 and 2 of the Code of Civil Procedure has been dismissed.

The petitioner claimed to be the owner of the property in dispute on the basis of sale deed dated 23.11.1908 and on the basis of entries in rapat roznamcha dated 21.6.1994. The learned courts below have come to a prima facie conclusion that the petitioner has failed to prove the sale deed dated 23.11.1908. In coming to this conclusion, the learned courts below have been pleased to observe that the boundaries given in the sale deed and in the suit did not tally. The learned courts below also took note of the fact that in the earlier litigation the plaintiff petitioner was not held to be in possession and an injunction was granted against the petitioner from interfering in the possession of the defendant therein. The appeal filed against the said order was also dismissed it has been stated at the bar

that the revision against the said order also stands dismissed by this Court. On the basis of the evidence and documents brought on record, the learned courts below have prima facie come to the conclusion that the plaintiff is not in possession of the property in dispute and thereby rejected his application moved under Order 39 Rules 1 and 2 CPC. It may be noticed that the plaintiff failed to give complete particulars in the suit filed by him for seeking injunction on the basis of ownership and possession.

The learned counsel appearing on behalf of the petitioner contended that a statement was made before the revenue court to the effect that the petitioner came in possession of the property some time in 2001 and therefore, he is entitled to protect his possession over the land in view of the law laid down by the Hon'ble Supreme Court in the case of **Rame Gowda (dead) by LRs. Versus M.Varadappa Naidu (dead) by LRs 2004(1) SCC 769** wherein the Hon'ble Supreme court has held as under:

> "7. The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being *Ramesh Chand Ardawatiya v. Anil Panjwani.* In between , to quote a few out of several, in *Lallu Yeswant Singh v. Rao Jagdish Singh* this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the geneal law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to court and obtain an order for

possession before he could eject the lessee. The Court quoted with approval the law as stated by a Full Bench of the Allahabd High Court in *Yar Mohd. v. Lakshmi Das* (AIR at p.4):

> "Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause."(AIR p.5, para 13)"

In the oft-quoted case of *Nair Service Society Ltd. v. K.C. Alexander* this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. The Court quoted Loft's maxim - " Possessio contra omnes valet praeter eur cui ius sit possessionis (he that hath posession hath right against all but him that hath the very right)" and said:(AIR p.1175, para 20)

> "A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able

to raise a presumption prior in time."

In *M.C. Chockalingam v. Manickavasagam* this Court held that the law forbids forcible dispossession, even with the best of title. In *Krishna Ram Mahale v. Shobha Venkat Rao* it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In *Nagar Palika, Jind v. Jagat Singh* this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and

without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner."

I have considered the arguments raised by the counsel for the petitioner and find no force in the same. The judgment relied upon by the

counsel for the petitioner does not in any way lays down that the person who enters possession during the pendency of the suit is also entitled to injunction even though he fails to prove prima facie case with regard to ownership and possession. In order to succeed qua the claim of injunction the party is to prove the possession on the date of filing of suit. The learned courts below, in view of the previous judgment rightly came to the conclusion that the petitioner failed to prove his prima facie possession. The petitioner has neither been able to prove his possession nor ownership and therefore, the learned courts below were right in dismissing the application by observing that the petitioner had no prima facie case and, therefore, was not entitled to injunction. The finding recorded by the learned courts below do not suffer from any jurisdictional error which may call for interference by this court in exercise of powers under Article 227 of the Constitution of India.

Dismissed.

However, nothing observed above shall be deemed to be an expression of opinion on the merits of the case.

Keeping in view that the suit filed by the plaintiff petitioner is pending since the year 1994, the learned trial Court is directed to dispose of the same expeditiously preferably within one year from the receipt of the certified copy of the order.

March 16, 2007 **(Vinod K.Sharma)**
gsv **Judge**